

Department of the Navy, DoD

§ 750.64

acts or omissions arising out of assigned duties shall be forwarded to the Judge Advocate General for action.

§ 750.55 Attorney's fees.

Attorney's fees not in excess of 20 percent of any settlement may be allowed. Attorney's fees so determined are to be paid out of the amount awarded and not in addition to the award. These fee limitations shall be incorporated in any settlement agreement secured from a claimant.

§§ 750.56–750.60 [Reserved]

Subpart D—Claims Not Cognizable Under Any Other Provision of Law

§ 750.61 Scope of subpart D.

This section provides information on payment of claims against the United States, not payable under any other statute, caused by the act or omission, negligent, wrongful, or otherwise involving fault, of Department of the Navy (DON) military and civilian personnel (hereinafter DON personnel) acting outside the scope of their employment.

§ 750.62 Statutory authority.

Section 2737 of title 10, United States Code, provides authority for the administrative settlement in an amount not to exceed \$1,000.00 of any claim against the United States not cognizable under any other provision of law for damage, loss, or destruction of property or for personal injury or death caused by military personnel or a civilian official or employee of a military department incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation. There is no right to sue. There are no territorial limitations and the Act has worldwide application.

§ 750.63 Definitions.

(a) *Civilian official or employee.* Any civilian employee of the DON paid from appropriated funds at the time of the incident.

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as

a means of transportation on land. See 1 U.S.C. 4.

(c) *Government installation.* Any Federal facility having fixed boundaries and owned or controlled by the U.S. Government. It includes both military bases and nonmilitary installations.

§ 750.64 Claim procedures.

(a) The general provisions of subpart A of this part shall apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be investigated and processed under 10 U.S.C. 2737 and this section.

(b) A claim is presented when the DON receives from a claimant or the claimant's duly authorized agent, written notification of a nonscope claim incident accompanied by a demand for money damages in a sum certain.

(c) A claimant may amend a claim at any time prior to final action. Amendments will be submitted in writing and signed by the claimant or the claimant's duly authorized agent.

(d) Claims submitted under the provisions of the Federal Tort Claims Act (FTCA) or Military Claims Act (MCA) shall be considered automatically for an award under this section when payment would otherwise be barred because the DON personnel were not in the scope of their employment at the time of the incident. If a tender of payment under this section is not accepted by the claimant in full satisfaction of the claim, no award will be made, and the claim will be denied pursuant to the rules applicable to the statute under which it was submitted.

(e) Damages caused by latent defects of ordinary, commercial type, Government equipment that were not payable under the MCA, Foreign Claims Act, or FTCA are payable under this section.

(f) Nonscope claims for damages caused by local national DON employees overseas are also payable under this section if the injury was caused by the use of Government equipment.

(g) Payment may not be made on a nonscope claim unless the claimant accepts the amount offered in full satisfaction of the claim and signs a settlement agreement.

(h) Payment for nonscope claims adjudicated by field commands will be affected through their local disbursing

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office by use of funds obtained from the Judge Advocate General.

(i) Claims submitted solely under 10 U.S.C. 2737 shall be promptly considered. If a nonscope claim is denied, the claimant shall be informed of reasons in writing and advised he may appeal in writing to the Secretary of the Navy (Judge Advocate General) provided the appeal is received within 30 days of the notice of denial. The provisions of § 750.51(b) of subpart C also apply to denials of nonscope claims.

§ 750.65 Statute of limitations.

(a) A claim must be presented in writing within 2 years after it accrues. It accrues at the time the claimant discovers, or in the exercise of reasonable care should have discovered, the existence of the act or omission for which the claim is filed.

(b) In computing time to determine whether the period of limitation has expired, exclude the incident date and include the date the claim was presented.

§ 750.66 Officials with authority to settle.

Judge Advocate General; Deputy Judge Advocate General; Assistant Judge Advocate General (General Law); Deputy Assistant Judge Advocate General (Claims and Tort Litigation); and Head, Tort Claims Branch (Claims and Tort Litigation) may settle a nonscope claim.

[72 FR 53421, Sept. 19, 2007]

§ 750.67 Scope of liability.

(a) Subject to the exceptions in § 750.68 of specific claims not payable, the United States shall not pay more than \$1,000.00 for a claim against the United States, not cognizable under any other provision of law, except Article 139, UCMJ.

(b) Article 139, UCMJ, 10 U.S.C. 939, is not preemptive. The prohibition in 10 U.S.C. 2737 on paying claims “not cognizable under any other provisions of law” applies only to law authorizing claims against the United States. Article 139 authorizes claims against servicemembers. See part 755 of this chapter.

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§ 750.68 Claims not payable.

(a) A claim for damage, loss, or destruction of property or the personal injury or death caused wholly or partly by a negligent or wrongful act of the claimant or his agent or employee.

(b) A claim, or any part thereof, that is legally recoverable by the claimant under an indemnifying law or indemnity contract.

(c) A subrogated claim.

§ 750.69 Measure of damages.

Generally, the measure-of-damage provisions under the MCA are used to determine the extent of recovery for nonscope claims. Compensation is computed in accordance with §§ 750.47 and 750.48 of subpart C, except damages for personal injury or death under this section shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States.

PART 751—PERSONNEL CLAIMS REGULATIONS

Subpart A—Claims Against the United States

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Subpart B [Reserved]

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 5013 and 5148; E.O. 12473, 3 CFR, 1984 Comp., p. 201.

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